

Amendment No. 1 to SB2195

Bell
Signature of Sponsor

AMEND Senate Bill No. 2195

House Bill No. 2262*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 16-22-103(4)(A)(i)(c), is amended by deleting the subdivision and substituting instead the following:

(c) The person committed a felony involving the use of force against the person of another; or

SECTION 2. Tennessee Code Annotated, Section 40-35-104(c)(9), is amended by deleting the language "alternative to incarceration" and substituting instead the language "alternative to incarceration, including, but not limited to, day reporting centers,".

SECTION 3. Tennessee Code Annotated, Section 40-35-104(c)(9), is amended by adding the following language at the end of the subdivision:

As used in this section, "day reporting center" means a highly structured, non-residential, and phase-based program that combines supervision, treatment, and reentry services for moderate to high-risk offenders with a substance abuse issue or mental health issue.

SECTION 4. Tennessee Code Annotated, Section 40-35-104, is amended by adding the following as a new subsection (f):

(f) The court shall strongly consider utilizing available and appropriate sentencing alternatives for any defendant who, as appropriately documented, including through a presentence investigation under § 40-35-207(a)(10), has a behavioral health need, such as a mental illness as defined in § 33-1-101, or is chemically dependent as defined in § 16-22-103. The court has sole discretion whether to utilize available sentencing alternatives under this subsection (f).

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SECTION 5. Tennessee Code Annotated, Section 40-35-303(c)(1), is amended by adding the following language at the end of the subdivision:

The period of probation imposed shall not exceed eight (8) years for a felony offense. If the court imposes a period of probation for more than one (1) conviction, the total period of probation imposed shall not exceed eight (8) years.

SECTION 6. Tennessee Code Annotated, Section 40-35-308(c), is amended by deleting the subsection and substituting instead the following:

(c)

(1) Notwithstanding the actual sentence imposed under § 40-35-303(c), at the conclusion of a probation revocation hearing, the court shall have the authority to extend the defendant's period of probation supervision for a period not in excess of one (1) year upon determining on the record that:

(A) The defendant has repeatedly and intentionally failed to comply with court-ordered treatment programming;

(B) The defendant has intentionally violated the conditions of probation regarding contact with the victim or the victim's family; or

(C) The defendant has intentionally failed to comply with restitution orders despite having the ability to pay the restitution owed, and extending the period of probation would be more effective than other available options in ensuring that the defendant pays the remaining amount of restitution owed.

(2) If the court makes at least one (1) of the determinations in subdivision (c)(1), the court may extend probation for additional periods not in excess of one (1) year each.

SECTION 7. Tennessee Code Annotated, Section 40-35-310(a), is amended by deleting the subsection and substituting instead the following:

(a) The trial judge shall possess the power, at any time within the maximum time that was directed and ordered by the court for the suspension, after a proceeding as provided in § 40-35-311, to revoke and annul the suspension. The trial judge may order the original judgment to be in full force and effect from the date of the revocation of the suspension and may reduce the original judgment by the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation or a portion of that amount of time. If the trial judge revokes the suspension due to conduct by the defendant that has resulted in a judgment of conviction against the defendant during the defendant's period of probation, the trial judge may order that the term of imprisonment imposed by the original judgment be served consecutively to any sentence that was imposed upon the conviction.

SECTION 8. Tennessee Code Annotated, Section 40-35-310(b), is amended by deleting the language "restore the original judgment" and substituting instead the language "restore the original judgment, which may be reduced by an amount of time not to exceed the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation,".

SECTION 9. Tennessee Code Annotated, Section 40-35-311(d), is amended by redesignating the existing language as subdivision (d)(1) and adding the following language as subdivisions (d)(2) and (3):

(2) Notwithstanding subdivision (d)(1), the trial judge shall not revoke probation, temporarily under subdivision (e)(1) or otherwise, based upon one (1) instance of technical violation or violations.

(3) As used in this section, "technical violation" means an act that violates the terms or conditions of probation but does not constitute a new felony or Class A misdemeanor.

SECTION 10. Tennessee Code Annotated, Section 40-35-311(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e)

(1) If the trial judge revokes the defendant's probation and suspension of sentence based upon a finding, by a preponderance of the evidence, that the defendant engaged in conduct that violated the conditions of probation and suspension but did not constitute a new felony or Class A misdemeanor, the trial judge may temporarily revoke the probation and suspension of sentence by order duly entered upon the minutes of the court, and:

(A) Impose a term of incarceration not to exceed:

(i) Fifteen (15) days for a first, second, or third revocation;

or

(ii) One (1) year or the remainder of the sentence,

whichever is shorter, for a fourth or subsequent revocation; or

(B) Resentence the defendant for the remainder of the unexpired term to any community-based alternative to incarceration authorized by chapter 36 of this title; provided, that the violation of probation and suspension is a technical violation and does not involve the commission of a new offense.

(2) If the trial judge revokes the defendant's probation and suspension of sentence based upon a finding, by a preponderance of the evidence, that the defendant has committed a new felony or Class A misdemeanor, the trial judge may revoke the probation and suspension of sentence by order duly entered upon the minutes of the court, and cause the defendant to commence the execution of the judgment as originally entered, which may be reduced by an amount of time not to exceed the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation.

(3) If the trial judge revokes the defendant's probation and suspension of sentence, the defendant has the right to appeal.

SECTION 11. Tennessee Code Annotated, Section 40-35-313(a)(1)(B)(i), is amended by deleting subdivisions (d) and (e) and substituting instead the following:

(d) Has not previously been convicted of:

(1) A felony for which a sentence of confinement was served; or

(2) A Class A misdemeanor within the previous fifteen (15) years for which a sentence of confinement was served; and

(e) Has not, within the previous fifteen (15) years or on more than one (1) occasion, been granted judicial diversion under this chapter or pretrial diversion.

SECTION 12. Tennessee Code Annotated, Section 40-36-105(8), is amended by deleting the language "accountability" and substituting instead the language "accountability and to measure the efficiency of all programs, including evaluating community corrections programs using the data provided by community corrections grant recipients pursuant to § 40-36-305(a)".

SECTION 13. Tennessee Code Annotated, Section 40-36-305(a), is amended by redesignating the first sentence of the subsection as subdivision (a)(1) and the last two sentences of the subsection as subdivision (a)(2), and adding the following language in subdivision (a)(1) after the language "defining program effectiveness":

and must collect and provide annually to the department of correction any information required by the department to evaluate the program under § 40-36-105(8), including, but not limited to:

- (A) The number of individuals admitted to the program;
- (B) The average caseload for caseload-bearing employees of the program;
- (C) The number of successful completions of the program;
- (D) The average time for an individual to successfully complete the program;
- (E) The number of individuals in the program who have incurred a new arrest, new conviction, or revocation of a community correction sentence, including the type of arrest, conviction, or revocation and the underlying conduct resulting in the arrest, conviction, or revocation; and
- (F) The average time an individual spends in the program before an arrest, conviction, or revocation.

SECTION 14. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 15. Sections 5-10 of this act shall take effect July 1, 2020, the public welfare requiring it, and apply to probation and diversion determinations made on or after that date. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.